

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

* * * * *

CASCADE HIGH SCHOOL DISTRICT "A")	
)	
Appellant,)	
)	OSPI 247-95
vs .)	
)	
CERTAIN RESIDENTS OF THE HASTINGS)	DECISION AND ORDER
ROAD AREA OF CASCADE COUNTY HIGH)	
SCHOOL DISTRICT "A")	
)	
Respondent.)	

* * * * *

PROCEDURAL HISTORY OF THIS APPEAL

This is an appeal by Cascade County High School District A (Great Falls High School) of a December 21, 1994, Order of the Cascade County Superintendent of Schools. The County Superintendent approved the Respondents' (the Hastings Road residents) request to transfer approximately two square miles of territory from Great Falls High School to Cascade County High School District C (Centerville High School).

On October 13, 1994, the Hastings Road residents petitioned to transfer the territory described as the Hastings Road Area from Great Falls High School to Centerville High School. On October 17, 1994, the Cascade County Commissioners certified that the petition met the requirements of § 20-6-320, MCA. Following proper notice, a public hearing was held on November 21, 1994. Testimony was heard, exhibits were admitted and a record was made.

On December 21, 1994, the Cascade county superintendent issued Findings, Conclusions and an Order granting the transfer. Great Falls High School filed a notice of appeal with this Superintendent. The parties had the opportunity to file briefs. Great Falls High School did not file any briefs. (The District filed its notice of appeal twice.) The Respondents filed an answer brief in response to the notice of appeal.

DECISION AND ORDER

The State Superintendent has jurisdiction over this matter under §§ 20-6-320 and 20-3-107, MCA. There is substantial, credible evidence on the record to support the findings of fact. The conclusions of law are correct. The order is affirmed.

STANDARD OF REVIEW

The State Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, and adopted by this Superintendent in § 10.6.125, ARM. Findings of fact are reviewed under a clearly erroneous standard and conclusions of law are reviewed under an abuse of discretion standard. Harris v. Trustees. Cascade County School Districts No. 6 and F, and Nancy Keenan, 241 Mont. 274, 786 P.2d 1164 (1990). The petitioner bears the burden of showing that he has been prejudiced by a clearly erroneous ruling. Terry v. Board of Regents, 220 Mont. 214, at 217, 714 P.2d 151, at 153 (1986). A finding is clearly erroneous only if a "review of the record leaves the Court with the definite and firm conviction

that a mistake has been committed." Wage Appeal v. Board of Personnel Appeals, 208 Mont. 33, at 40, 676 P.2d 194, at 198 (1984).

Conclusions of law are subject to more stringent review. The Montana Supreme Court has held that conclusions of law are reviewed to determine if the agency's interpretation of the law is correct. Steer, Inc. v. Dept. of Revenue, 245 Mont. 470, at 474, 803 P.2d at 603 (1990).

MEMORANDUM OPINION

Great Falls High School's argument on appeal is that the "transcript indicates clearly the transfer should be denied" (Appeal, page 2). A review of the record does not support this argument. There is evidence in the record to support the County Superintendent's findings of fact and his conclusions of law are supported by statute.

The transcript shows that the Hastings Road residents, the Centerville School District and the Great Falls School District all had the opportunity to offer evidence in support of their various positions. The evidence and testimony from the Hastings Road residents persuaded the County Superintendent. The State Superintendent may not substitute her judgment on a question of a fact for that of the county superintendent who heard the evidence.

Section 20-6-320(6) states the test a county superintendent must apply to decide whether to grant or deny a request to transfer territory: "The decision must be based on the effects

that the transfer would have on those residing in the territory proposed for transfer as well as those residing in the remaining territory of the high school district."

This is a balancing test. A county superintendent weighs the benefits and burdens for the residents living in the area to be transferred against those for the residents living in the remaining area of the district. The Cascade County Superintendent weighed the benefits and burdens for both areas and concluded that the benefits to the Hastings Road residents outweighed the burdens to the remaining Great Falls High School District.

The County Superintendent considered the effect on the Great Fall School District tax base (FOF 11). The District's tax base is not reduced below \$300,000. The reduction in tax value is \$29,375 which represents .0003 of the tax base. This was supported with evidence in the record compiled by Great Falls High School District (Exhibit 1) and information that is a matter of public record (the Great Falls High School District tax base).

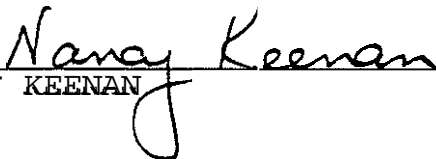
The County Superintendent also considered the effects of the transfer on the Hasting Road residents by considering the current attendance and social patterns in the area (FOF 14, 15, 16, 18, 19, 20). The Centerville community where the Centerville High School is located is the social, community, and cultural center for the Hastings Road territory. This is substantiated by the fact that the children living in the Hastings Road area currently attend school in Centerville and Centerville is closer to their

homes then Great Fall. All of these facts are supported by testimony and evidence in the record. (See transcript pages 4-6 and Exhibit C)

Great Falls High School maintains that the fact that it charges tuition while Centerville High School does not, should be dispositive of the issue, reasoning that the territory can remain in its district and students can attend Centerville High School without cost to the parents. The merits of this argument are tenuous at best and the Cascade County Superintendent was not compelled to accept it as the reason to deny the transfer.

The County Superintendent weighed the evidence in the record and concluded that the benefits of the transfer to Centerville High School District outweighed the burdens. The Order is affirmed.

DATED this 17 day of April, 1996.



NANCY KEENAN

CASCADE.247

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 22nd day of April, 1956, a true and exact copy of the foregoing Decision and Order was mailed, postage prepaid, to the following:

Earl B. Lamb
Clerk of the Board
Great Falls Public Schools
1100 4th Street South
P.O. Box 2425
Great Falls, MT 59403

Cascade County High School
District "A"
PO Box 2429
Great Falls, MT 59404

Richard Michelotti
Cascade County
Superintendent of Schools
415 2nd Ave. N.
Great Falls, MT 59403

Duane or Bonnie Culver
P.O. Box 57
Sand Coulee, MT 59472

Greg or Kathy Dammen
Tracy Rt Box 67A
Sand Coulee, MT 59472

Ken or Janet Halko
Box 132
Stocket, MT 55480

Tony or Marie May
Tracy Rt Box 67B
Sand Coulee, MT 59472

Rick or Karen Pepos
Tracy Rt Box 66
Sand Coulee, MT 55472

Doug or Kim Pierson
Tracy Rt box 71A
Sand Coulee, MT 59472

Rex or Tracy Rigor
Tracy Rt Box 73A
Sand Coulee, MT 59472

Ron or Luanne Scott
Tracy Rt Box 72
Sand Coulee, MT 59472

Lou or Leona Udall
C/O Ron Scott
Tracy Rt Box 72
Sand Coulee, MT 59472


Pat Reichert Pat Legal

Office of Public Instruction